



INTERIOR BOARD OF INDIAN APPEALS

Paul E. Wood

2 IBIA 315 (06/24/1974)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

ADMINISTRATIVE APPEAL OF PAUL E. WOOD

IBIA 74-24-A

Decided June 24, 1974

Appeal from the decision of the Area Director, Bureau of Indian Affairs, Aberdeen, South Dakota, affirming the action of the Acting Superintendent, Fort Totten Agency, Fort Totten, North Dakota, in refusing to rescind approval of a lease.

Affirmed.

APPEARANCES: Traynor & Rutten, by Thomas E. Rutten, Esq., for appellant.

OPINION BY ADMINISTRATIVE JUDGE SABAGH

This is an appeal from the decision of the Area Director, Bureau of Indian Affairs, Aberdeen, South Dakota, dated September 26, 1973, affirming the action of the Acting Superintendent, Fort Totten Agency, Fort Totten, North Dakota.

The record discloses that the appellant submitted bids for the leasing of Devils Lake Sioux Allotments Nos. 481, 853, and 1005. Bids were opened on June 4, 1973, appellant being the sole bidder. The bids were rejected because the amounts bid were less than the present fair annual rental. Subsequent to the rejection of these bids, one Raymond Jetty obtained forms from the Fort Totten Agency and proceeded to negotiate an acceptable lease with the individual land owners. The appellant was notified by the Acting Superintendent by letter of August 30, 1973 that the lands in question would not be readvertised for lease since an acceptable lease had been negotiated between Jetty and the land owners. An appeal was timely filed with the Area Director who by letter decision dated September 26, 1973 sustained the action of the Acting Superintendent.

In his reasons for appeal, the appellant herein, contends that the actions of the Bureau of Indian Affairs, were discriminatory and prejudicial to the appellant in that the appellant was denied the same opportunity to negotiate with respect to the three tracts of land in question.

These contentions were raised in the appeal to the Area Director and were duly considered and rejected in the Area Director's decision for reasons fully set forth therein.

Having received the entire record and considered appellant's petition for appeal, unsupported by a brief, the Board finds that the appellant has shown no reason why the findings, conclusions and decision of the Area Director should not be affirmed. We hold that there is substantial evidence in the record to support the decision of the Area Director which is attached hereto.

NOW, THEREFORE, by virtue of the special authority delegated to the Board of Indian Appeals by the Secretary of the Interior (211 DM 13.7) the decision of the Area Director, Aberdeen, South Dakota, is HEREBY AFFIRMED.

//original signed
Mitchell J. Sabagh
Administrative Judge

I concur:

//original signed
David J. McKee
Chief Administrative Judge

Attachment

Real Prop. Mgt.
Ten. & Mgmt.
Fort Totten
Leasing

SEP 26 1973

Through: Acting Superintendent, Fort Totten Agency

Mr. Paul E. Wood
Warwick, North Dakota 58381

Dear Mr. Wood:

This is in response to your Petition for Appeal from the decision of the Acting Superintendent, Fort Totten Agency to abide by the wishes of the landowners in the leasing of Devils Lake Sioux Allotments Nos. 481, 853, and 1005 to Raymond Jetty, Jr. of St. Michael, North Dakota.

The records indicate that these allotments were included in the advertisement dated May 18, 1973 which provided for bids to be opened on June 4, 1973. The lands were offered for lease for farming, pasture and haying purposes as indicated in the advertisement. You submitted the following bids:

Item 70	DLS-481	\$340 for farming and haying "plus \$80.00 for hunting and trespass" - 5 years.
Item 72	DLS-853	\$420 for farming and haying "plus \$80.00 for hunting and trespass rights" - 5 years.
Item 73	DLS-1005	\$280.00 for farming and "\$40.00 per year for hunting and trespass rights"

You were notified by letters dated June 13, 1973 from the Acting Superintendent that you were not the successful bidder on these tracts.

Subsequent to the date of the notice to you, Mr. Raymond Jetty obtained the necessary forms from the Fort Totten Agency to negotiate a lease with the landowners, since an acceptable bid was not received at the advertised sale. The records show that the landowners accepted the terms offered by Mr. Jetty, but the rental rate offered was not acceptable and the leases could not be approved. The owners of the land also submitted a statement to the Superintendent indicating that they did not wish to lease their land to anyone other than Mr. Jetty.

The Acting Superintendent advised you by letter dated August 9, 1973 that the landowners were in the process of negotiating a lease and that if an acceptable lease was not received by August 18, 1973 the lands would be readvertised for lease. The landowners do have the right to negotiate leases with lessees of their choice pursuant to the provisions of the Code of Federal Regulations, Title 25, Part 131.6(a). In the event that the landowners were unsuccessful in negotiating an acceptable lease, the Superintendent would be required to advertise the lands for lease pursuant to 25 CFR 131.7. Although 25 CFR 131.6(c) authorizes the Secretary to negotiate certain leases, this authority has not been redelegated to the Superintendent in this case. Therefore, the Superintendent at Fort Totten does not have the authority to negotiate leases on behalf of the Indian owners.

The Superintendent notified you by letter dated August 30, 1973 that an acceptable lease had been negotiated by the owners and the lands would not be readvertised for lease, and informed you of your right to appeal this decision.

The regulations further provide that "no lease shall be approved or granted at less than the present fair annual rental" (See 25 CFR 131.5(b)). However, as pointed out in your appeal, leases may be granted pursuant to 25 CFR 131.5(b)(3) at less than the fair annual rental when such action is in the best interest of the landowners. This provision applies to those cases where it is not possible to obtain fair annual rental. The estimate of fair annual rental is generally based upon leasing of the land for purposes of its highest and best use for a term compatible with proper protection and preservation of the property at the highest rental that may be realized. Leases approved under this provision are generally limited to a term of one year. This provision would not be applicable in the present case since the landowners did negotiate at a higher, acceptable rate.

The copy of Tribal Resolution No. A05-72-35 dated January 3, 1972 which you submitted here was previously transmitted to us by the Superintendent, Fort Totten Agency by letter dated January 27, 1972. The Superintendent pointed out that the Tribe would have authority to negotiate leases with lessees of their choice on the lands owned by the Tribe, but that it would be questionable whether the Tribe had the authority to usurp the rights of the individual landowners in selecting their own lessees. The resolution did not require the action of this office. We have been informally advised that you have recently obtained the

necessary forms from the Fort Totten Agency to negotiate a lease with the landowners on another tract of trust land on which your lease will expire next year. We have also been advised that Mr. Bob Woods, who is also mentioned in the resolution, is presently negotiating a lease with the landowners on a tract of trust land.

In view of the above it appears that you are aware of the right of the landowners to negotiate their own leases. There is nothing in the files which would indicate that any proposed leases have been disapproved on the basis of the Tribal action, or that you have been denied the right to negotiate in the instant case. Your request to have the lease to Raymond Jetty, Jr. rescinded and your bids approved, or in the alternative that you be afforded the same opportunity to negotiate as was afforded Mr. Jetty, is denied and the action taken by the Acting Superintendent, Fort Totten Agency is hereby affirmed.

You have the right to appeal this decision to the Assistant Secretary of Indian Affairs. If you decide to appeal, you should file your appeal with this office within twenty days from the date of this letter. The appeal and the entire record of the case will be submitted to the Assistant Secretary for appropriate consideration.

Sincerely yours,

//original signed
Deputy Area Director